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BARBARA A. HARNED  
DIRECTOR  
CHIEF ADMINISTRATIVE LAW JUDGE

November 21, 1997

Paul C. Brush  
Executive Director  
Board of Psychological Examiners  
124 Halsey Street  
P.O. Box 45017  
Newark, NJ 07101

Re: *I/M/O the Suspension or Revocation of the License of Allen P. Blasucci, Phy.D. and Luis R. Nieves, Psy.D. to Practice Psychology in the State of New Jersey*  
OAL DKT. NO. BDS 2394-96  
AGENCY DKT. NO. --

Dear Executive Director Brush:

Attached hereto please find the Final Order issued in the above-captioned matter.

Very truly yours,

*Barbara A. Harned*

Barbara A. Harned  
Director

BAH/gjb  
Enclosure

Joan D. Gelber, DAG  
Steven Blader, Esq.  
Christopher R. Barbrack, Esq.



*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW

**FINAL ORDER**

OAL DKT. NO. BDS 2394-96

AGENCY DKT. NO. N/A

IN RE THE SUSPENSION OR REVOCATION  
OF THE LICENSE OF ALLEN P. BLASUCCI  
AND LUIS R. NIEVES.

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BEFORE **BARBARA A. HARNED**, DIRECTOR:

On July 23, 1997, Administrative Law Judge Jeff Masin issued an initial decision in the above-captioned matter. The Board of Psychological Examiners (Board) granted respondents additional time to file exceptions to the initial decision. Therefore, the time for issuing a final decision was extended from September 15, 1997 to October 31, 1997. On October 20, 1997, counsel for Allen Blasucci filed a motion with the Board requesting that the Board reject the findings and conclusions set forth in the initial decision issued by Administrative Law Judge Jeff Masin or grant a new trial based upon allegations that Judge Masin was biased or that there was an appearance of bias because Judge Masin is named as a defendant in a sexual harassment lawsuit. Issues of disqualification of a judge are matters within the jurisdiction of the Director of the Office of Administrative Law (OAL), *N.J.A.C. 1:1-3.2(c); 1:1-14.10(k)*. Accordingly, the Board referred this issue to me for determination.

Respondents were charged with failure to comply with their contractual responsibilities to the Division of Youth and Family Services (DYFS); violation of independent professional responsibilities by engaging in numerous forms of gross and/or repeated negligence; and misrepresentation and/or professional misconduct in the course of providing services to DYFS. The complaint sets forth twelve pages of alleged violations which include allegations that respondent Blasucci repeatedly engaged in dual relationships, including sexual relationships with employees and a patient.

The hearing in this matter commenced in May 1996 and concluded in March of 1997 requiring 28 hearing days. In July 1996, a complaint was filed by an employee of the Office of Administrative Law, Eileen Jarosz, alleging that she had been sexually harassed by an administrative law judge. The Office of Administrative Law is a defendant in this suit. In February 1995, Judge Masin, who was then Acting Director of the OAL, had issued a private reprimand to the administrative law judge concerning two alleged incidents of sexual harassment. Judge Masin is also named as a defendant in the suit based upon allegations that he improperly handled the sexual harassment complaint in his capacity as the Acting Director.

According to Stephen Blader, who represented respondent Blasucci during the hearing (respondent is now represented by Christopher Barbrack), Judge Masin did not disclose the fact that he was a defendant in a sexual harassment lawsuit. The sexual harassment lawsuit was the subject of several newspaper accounts, including a front page article in the New Jersey Law Journal in July 1996. The initial decision in this matter was issued by Judge Masin on July 23, 1997. Respondent asserts that he did not become aware of the sexual harassment lawsuit involving Judge Masin until October 3, 1997 after his co-respondent's wife consulted with an attorney who had knowledge of the case against Judge Masin.

Preliminarily, I wish to address the question of whether it is appropriate for me to determine this issue. The Office of Administrative Law is a defendant in the sexual harassment lawsuit which gave rise to this motion. As the agency head of the Office of Administrative Law, I will be involved in defending that lawsuit. My tangential involvement in that suit, however, does not require my disqualification herein. I have not been named individually as a defendant in the sexual harassment complaint, nor was I the Director or a employee of this agency during the time when the alleged incidents which are the subject of that lawsuit occurred. I did not participate in the decision as to the appropriate response to the employee complaints which gave rise to that action. Additionally, the issue under review does not involve a determination of sexual harassment or other misconduct, but an issue of recusal.<sup>1</sup>

<sup>1</sup> For the record, I note that I have recused myself in an unrelated civil rights matter based upon my involvement in defending the OAL in the Superior Court action. The factual allegations in that civil rights case bared an uncanny similarity to the allegations in the Jarosz matter. That disqualification is limited to the specific facts alleged in that proceeding and is not binding in all matters which involve allegations of sexual misconduct.

The Uniform Administrative Procedure Rules, *N.J.A.C. 1:1 et seq.*, govern the conduct of contested case hearings and state clearly the procedure to be followed when a party to a hearing believes that the administrative law judge should be disqualified. A party is to apply by motion to the judge for his or her recusal as soon as practicable after the party has reasonable cause to believe that grounds for disqualification exist. *N.J.A.C. 1:1-14.12(c)*. Appeals of rulings on judge disqualification must be made interlocutorily: "[A] party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case." *N.J.A.C. 1:1-14.10(m)*. The genesis of this rule lies in the fact that issues concerning disqualification impact directly on the conduct of the hearing. Review at the conclusion of the hearing would, if reversed, require the proceeding to be voided and a new hearing conducted. In order to avoid this result, appeals concerning this issue must be taken interlocutorily. Rule Proposal Summary Statement, 19 *N.J.R.* 1592(a). "A contrary rule would only countenance and encourage unacceptable inefficiency in the administrative process." *Marcus v. Director, Office of Workers' Comp Prog.* 548 F.2nd 1044, 1051 (D.C. Cir. 1976). See also, *Bonnett v. Stewart*, 155 *N.J. Super.* 326 (App. Div. 1978), cert. den. 77 *N.J.* 468 (1978).

In *In Re Tenure Hearing of Fargo*, 91 *N.J.A.R.* 2nd (EDU) 121 (1991), the issue of judicial recusal was raised after issuance of the initial decision, as in the instant matter. In *Fargo* the respondent argued that the administrative law judge should have recused herself because she was the plaintiff in a pending lawsuit alleging sexual discrimination. The request for review and recusal was rejected as out of time since it had been made after the initial decision was issued.

As in *Fargo*, the recusal issue herein was raised after the initial decision was issued and after the time for issuance of the final decision would have expired had not an extension been granted. The alleged basis for the recusal has been a matter of public record for more than one year. To grant the request herein would result in the very harm the rule seeks to avoid: requiring retrial of a lengthy and complicated matter. A party should not be able to attempt to use a recusal motion to reverse an unfavorable decision.

Even if the issue been raised in a timely and appropriate manner, grounds have not been set forth to require the recusal. *N.J.A.C. 1:1-14.12(a)8* provides that: "[a] judge shall, on his or her own motion, withdraw from participating in any proceeding in which the judge's ability to provide a fair and

impartial hearing might reasonably be questioned, including . . . when there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.” However, the appearance of impropriety must be “something more than a fanciful possibility.” *Higgins v. Advisory Committee on Professional Ethics*, 73 N.J. 123 (1977). A judge is not disqualified by his life experiences. For example, judges are not disqualified from auto accident trials because of involvement in an auto accident or from divorce cases because of their divorce or from a contested adoption because they have adopted children. *Johnson v. Salem Corporation* 189 N.J. Super. 50 (App. Div. 1983); *Serrento v. Family and Children Society of Elizabeth* 74 N.J. 13 (1977).

Judge Masin is not alleged to have committed any sexual harassment or other misconduct nor is he the alleged victim of sexual harassment. The allegations in the *Jaros* matter assert that in his capacity as a supervisor, Judge Masin failed to take sufficient action concerning the alleged misconduct of an employee. In *Pepper v. Princeton University Board of Trustees*, 151 N.J. Super. 15 (App. Div. 1977), a case involving alleged sexual discrimination, the trial judge was a named defendant in a unrelated sexual discrimination action involving the Mercer County Probation Department. The Appellate Division declined to interfere with the assignment judge’s denial of a motion to disqualify a judge named as a defendant in that action where no particular bias or prejudice was demonstrated prior to trial and the trial was conducted with fairness to all parties. The respondent herein advances not even a scintilla of evidence that Judge Masin conducted this trial with other than the utmost fairness and competence. Moreover, in this lengthy, serious, and complicated matter, the allegations concerning sexual misconduct constitute only one issue among many others.

Finally, even if there were any merit to respondent’s recusal motion, I see no reason at this point why a new hearing would be necessary. Respondent argues that a “less conflicted” administrative law judge would have reached different conclusions; that Judge Masin based findings on a “very slim reed of evidence, on tangential findings that have no bearing on the sexual issue, and against the sworn denials of Dr. Blasucci and his alleged victim,” and that Judge Masin “could not objectively evaluate the evidence presented.” Thus, while respondent objects to Judge Masin’s conclusions, claiming that they were influenced by an alleged bias, he does not complain that the record was not fully or fairly developed. There is no allegation that Judge Masin prevented development of the record, only that he

drew the wrong conclusions. The fact that the Board of Psychological Examiners has the opportunity to review the complete record and render a final decision in this case cures any possible defect in the hearing even if, assuming arguendo, Judge Masin should have recused himself. I note that there is no allegation of bias on the part of the Board of Psychological Examiners. See, *In Re Tenure Hearing of Fargo, supra*.

For the above stated reasons, the motion for recusal of Judge Masin and for a new trial is **DENIED**.

11/21/97

Date

Barbara A. Harned

**BARBARA A HARNED, DIRECTOR**

**CHIEF ADMINISTRATIVE LAW JUDGE**